

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Wael R. Joseph, et al. Art Unit: 1616
Serial No.: 10/660,203
Filed: September 11, 2003
Confirmation No.: 6548
For: MOISTURIZING AND LUBRICATING COMPOSITIONS
Examiner: Sharmila S. Gollamudi

January 14, 2008

REPLY BRIEF

This is a reply to the Examiner's Answer mailed November 15, 2007.

Applicants' Comments on the Examiner's Response to Argument

In response to Applicants' arguments regarding the rejection of claims 1-4, 8-10, 12-13, 15-17, 21-22, 25-31, 34-35, 39-41, 43-46, 50-54, and 57-59 under 35 U.S.C. 102(b) as being anticipated by Tyrell et al, the Office states that "appellant does not discuss Example 13 in which the examiner's rejection is based." Applicants respectfully note that Example 13 of the Tyrell reference was addressed at pages 19 and 21-22 of Appellents' Appeal Brief. For the convenience of the Examiner, we have included below the argument as it was set forth in the referenced portions of the Appeal Brief.

Applicants recite on page 19-20 of the Appeal Brief: "Similar to Krzysik, the Tyrell, et al. reference discloses Examples which either lack entirely one of the components of the composition of claim 1 and/or comprise amounts of one or more component that falls outside of the claimed ranges. For example, the formulation of **Example 13** comprises: 28wt.% propylene glycol (humectant/compatibilizing agent); 5wt.%"

hydrogenated starch hydrolysate (humectant); 1wt.% chitosan polymer; 25wt.% polyethylene glycol 10,000 (immobilizing agent); 25wt.% behenyl alcohol (emollient/immobilizing agent)¹; and 10wt.% dimethicone (emollient). As with the formulations of the working Examples in Krzysik discussed above, components such as propylene glycol, which have dual functions (i.e., act as both humectant and compatibilizing agents), must be considered when determining the amounts of both humectant and compatibilizing agent. As such, like in Krzysik, the amount of components that act as humectants is greater than 30wt.%, which exceeds the upper end of the range required in claim 1 (i.e., about 20% by weight)."

Further, Applicants recite on pages 20-22 of the Appeal Brief: "Furthermore, it cannot be assumed that the limitation "at least about 85% (by weight) of the components of the moisturizing and lubricating composition form a single phase at a temperature of from about 45°C to about 80°C," is inherent in Tyrell, et al. Similar to the Krzysik reference discussed above, simply stating that the compositions disclosed therein have a melting point of from about 45°C to about 80°C, does not mean that it is inherent that at least about 85% (by weight) of the components of the compositions form a single phase at the composition's melting point. Specifically, in the formulation of Example 13 in Tyrell, et al., the formulation comprises 28wt.% propylene glycol. As noted above, propylene glycol is a liquid within the temperature range of 45°C to 80°C. Thus, the formulation of Example 13 comprises at least 28wt.% components that are liquid within the temperature range of 45°C to 80°C.

¹ Applicant respectfully notes that behenyl alcohol is used in the formulation of Example 13, not benzyl alcohol as stated by the Office in the Final Office action on page 7.

Additionally, the formulation of Example 13 comprises 25wt.% polyethylene glycol 10,000; and 25wt.% behenyl alcohol, each of which having melting points that fall within or above the temperature range of 45°C to about 80°C. In particular, as noted above, behenyl alcohol has a melting point between 65°C and 73°C (Exhibit C)². Further, as known in the art, the melting point of polyethylene glycol increases as the molecular weight increase (e.g., PEG 1500 has a melting point of between 44°C and 48°C; PEG 4000 has a melting point of between 54°C and 58°C; and PEG 6000 has a melting point of between 56°C and 63°C (see Exhibit E)), and as such, the melting point of PEG 10,000 is at least within, or even above, the temperature range of 45°C to about 80°C. Since the melting point for both of these components is above 45°C, at least some portion of these components should be solid at the lower end of the 45°C to 80°C temperature range. Thus, in addition to comprising at least 28wt.% components that are liquid within the temperature range of 45°C to 80°C, the formulation of Example 13 also comprises at least around 50wt.% components that are solid at the lower end of the 45°C to 80°C temperature. As such, Tyrell, et al. fail to disclose, either explicitly or inherently, compositions that necessarily have at least about 85% (by weight) of the components of the composition form a single phase at a temperature of from about 45°C to about 80°C.

Since Tyrell, et al. fail to disclose a composition wherein no more than about 50% (by weight) of the components are liquid at room temperature and no less than about 50% of the components are solid at room temperature, and wherein at

² Appellants note that as Exhibits C & E have already been submitted with the original filed Appeal Brief on September 17, 2007, the Exhibits are not being submitted herewith.

least about 85% (by weight) of the components of the moisturizing and lubricating composition form a single phase at a temperature of from about 45°C to about 80°C as required in claim 1, Tyrell, et al. fail to disclose each and every limitation of claim 1. As such, claim 1 is novel over the Tyrell, et al. reference."

Conclusion

In addition to the reasons set forth in Applicants' Appeal Brief, the rejections of the claims on appeal are in error for the reasons set forth above. Therefore, Applicants request that the Examiner's rejections of claims 1-59 be reversed. Applicants do not believe that any fee is due in connection with this reply. However, the Commissioner is hereby authorized to charge any deficiency or overpayment of any fees to Deposit Account No. 01-2384.

Respectfully submitted,

/Christopher M. Goff/

Christopher M. Goff, Reg. No. 41,785
ARMSTRONG TEASDALE LLP
One Metropolitan Square
Suite 2600
St. Louis, Missouri 63102
(314) 621-5070

CMG/JMB/dhm
By EFS